

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

Case No. 1:20-cr-82

JOHN WILLIAM KIRBY KELLEY,
a/k/a “Carl,”
a/k/a “BotGod”

Defendant.

JOINT MOTION TO EXTEND TIME FOR INDICTMENT

COMES NOW the United States of America by its attorneys, G. Zachary Terwilliger, United States Attorney for the Eastern District of Virginia, and Carina A. Cuellar, Assistant United States Attorney, with the express consent of the defendant, and with advice of defense counsel, and respectfully moves this Court to extend the time to indict this case from May 14, 2020 until June 18, 2020. In support thereof, the parties state as follows:

1. The defendant was arrested on a federal charge on January 10, 2020. The defendant made his initial appearance in the Eastern District of Virginia on January 10, 2020. The defendant was ordered detained pending a combined preliminary and detention hearing. On January 15, 2020, the defendant appeared in court for his combined preliminary and detention hearing. After the defendant waived his preliminary hearing and did not seek release from custody, the Honorable John F. Anderson, United States Magistrate Judge for the Eastern District of Virginia, found that the criminal complaint was supported by probable cause and ordered the defendant detained pending trial.

2. The Speedy Trial Act requires that a defendant be indicted within thirty days of the defendant's arrest. *See* 18 U.S.C. § 3161(b). The Court granted multiple extensions of this time. The current extension of the time to indict is until May 14, 2020.

3. The defendant has signed a plea agreement and his plea hearing was scheduled for May 8, 2020. The plea hearing could not be scheduled earlier because of the public health crisis posed by Coronavirus Disease 2019 ("COVID 19"). Pursuant to General Order 2020-07, all criminal in-person proceedings in the U.S. District Court for the Eastern District of Virginia, including plea hearings, with the exception of critical or emergency proceedings, were postponed or continued until after May 1, 2020. The defendant's plea hearing was not a critical or an emergency proceeding.

4. The defendant's plea hearing has been rescheduled to June 12, 2020. Pursuant to General Order 2020-12, all criminal in-person proceedings in the U.S. District Court for the Eastern District of Virginia, including plea hearings, with the exception of critical or emergency proceedings, were postponed or continued until after June 10, 2020. The defendant's plea hearing is not a critical or an emergency proceeding.

5. Because the parties have reached a plea agreement and due to the public health emergency posed by COVID-19, extending the time in which to obtain an indictment would be in the best interests of justice and the defendant because it will allow the defendant to enter into a pre-indictment guilty plea, which the defendant and his counsel believe is in the defendant's best interest, spare the public the resources required to obtain an indictment, and protect the public from the spread of COVID-19. Therefore, the ends of justice served by the requested extension outweigh the interests of the public and the defendant in a speedy indictment and trial.

6. The defendant hereby agrees to waive any objections under the Speedy Trial Act

and to extend the government's time to indict this case through and including June 18, 2020. Should the plea hearing need to be rescheduled then the parties will consult and seek another extension of time to indict. This waiver is made knowingly, intentionally, and voluntarily by the defendant, and with full knowledge of the provisions of the Speedy Trial Act, 18 U.S.C. §§ 3161, *et. seq.*, and with the advice and consent of counsel.

7. The government has discussed this motion with counsel for the defendant. Counsel has represented that they has spoken with the defendant about this matter and that the defendant knowingly and voluntarily agrees to this motion.

WHEREFORE, the parties request that the time to indict this case be extended through and including June 18, 2020, and that such time be excluded in computing the time within which an indictment must be filed pursuant to Title 18, United States Code, Section 3161(h).

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: /s/ Carina A. Cuellar
Carina A. Cuellar
Assistant United States Attorney